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for he concerns himself almost exclusively with the external side of the Staple history. The accidental circumstances of its external relations, usually of a purely diplomatic nature, are chronicled in great detail, while very little effort is made to bring out its internal organization and functions, or to articulate its development with the broader economic conditions of the period. This same tendency is seen in the fact that virtually no use is made of parallel developments in England and on the Continent. The English Staple, the Merchant Adventurers, the Hanseatic League, Dutch and even Prussian commercial politics, afford striking points of comparison and contrast with the Scottish institution that would have been very illuminating. Indeed, a little more play of that historical imagination which the author thrusts aside so unkindly in his introductory paragraph, would have added much even to the scholarly value of the work. Incidentally, it may also be noted that the titles in the bibliography appear without date or place of publication, that the view of Veere is of a period later than that of the text, and that occasional misprints like 1687 for 1587 (p. 107) occur.

But, notwithstanding these criticisms, Mr. Rooseboom is to be congratulated, not only for his thorough and patient researches, but also for his distinct contribution to the history of the subject. It is a pleasure also to note that, instead of duplicating in a large measure the work of his predecessors, he has rather strengthened and supplemented it, especially where the Dutch archives were of service to correct or expand the account by Yair.

WILLIAM E. LINGELBACH.

*The High Court of Parliament and its Supremacy: an Historical Essay on the Boundaries between Legislation and Adjudication in England.* By CHARLES HOWARD MCILWAIN, Thomas Brackett Reed Professor of History and Political Science in Bowdoin College. (New Haven: Yale University Press. 1910. Pp. xix, 409.)

PROBABLY no theme has been written upon more extensively than that of the English Parliament, and yet there are many phases of its history which remain for further investigation and treatment. The present work is a study of Parliament in the light of recent political science, and centres upon the evolution of judicial and legislative functions. In the beginning there was no distinct power of legislation, for the Middle Ages rested upon the fundamental conception that the law should be applied as occasion required, but that it was not to be seriously changed. Without distinctions which to us are "as clear as sunlight", there was at first but one function of government, which was still in the future to be differentiated and defined. Parliament was in fact a court, which differed from other courts only as it was a higher power and interpreted the law with greater latitude. So the early statutes are found to be

mainly of an interpretative or judicial character, while the growth of a legislative power came gradually and with little consciousness of a great transition.

In these statements no claim to originality is made, for the same views are current among various writers of the school of Maitland. It may indeed be considered no longer necessary to argue that in the time of Magna Charta the state was predominantly feudal, and that the national character of early institutions was exaggerated by Freeman. But from these premises the author carries his argument forward into modern times, where the subject has not before been so satisfactorily treated. No doubt the chapters which will be found most valuable are those dealing with the Tudor and Stuart periods, wherein a wide knowledge of the legal and political literature of the time is shown. It was then that the separation of functions began fairly to operate, until by stress of the Puritan Revolution the former judicial supremacy of Parliament was converted into a legislative supremacy. Still both judges and members of Parliament continued to labor under much confusion of thought, while to this day many forms survive in legislatures and courts which can be understood only by reference to the original conceptions of the Middle Ages. What is still more strange, a certain duality of authority is found to persist in the American courts, which continue some of the practices of the seventeenth and eighteenth centuries more extensively than the English courts themselves. Montesquieu's theory of the separation of powers has in fact never been completely carried out.

A point of detail open to criticism is found in regard to the position of the judges in Parliament (pp. 31-37). It seems unnecessary to argue that at first they were of "equal right" with the lords, and that later they became "merely advisers". It is not likely that any two of the estates or groups in Parliament were on the same footing. Sometimes, it is true, the judges are mentioned in the same manner as the lords, while at other times they are spoken of differently (see *Eng. Hist. Rev.*, XXIII. 3-5). In the Council, it is clear, one might be a member "for law cases and not otherwise", and the same thing was probably true of Parliament. Moreover, it is hardly correct to say that in the Council the judges came merely to give their advice "and the nobles followed it or not as they wished". There was in fact already in the fourteenth century somewhat more perception of the difference between legislative and judicial action than the author allows. It may be added that a work which cites so large an array of authorities should present also a complete bibliography.

JAMES F. BALDWIN.